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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,980	09/29/2000	Arthur Zavalkovsky	50325-0106	1727

7590 10/29/2003

Hickman Palermo Truong & Becker LLP  
1600 Willow Street  
San Jose, CA 95125-5106

EXAMINER

BATES, KEVIN T

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/675,980

Applicant(s)

ZAVALKOVSKY ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The declaration was received on January 8, 2001.

#### ***Information Disclosure Statement***

The information disclosure statements (IDS) submitted on September 1, 2002 and January 13, 2003 were considered by the examiner.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 5, 9, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Chiang (6,594,277).**

Regarding claims 1, 5, 9, 13 and 14, Chaing discloses a method for marking one or more packets of data in a packet-switched network based on achieved flow bandwidth information within the network (Column 2, lines 41 – 45), comprising the computer-implemented steps of marking a first group of one or more packets of a data flow with a first behavioral treatment value (Column 4, lines 15 – 19), wherein the first behavioral treatment value directs devices within the network to treat the first group of one or more packets with a first quality of service treatment (Column 4, lines 20 – 29); determining an achieved flow bandwidth for the data flow based on data traffic within

the network (Column 5, lines 19 – 25); determining a second behavioral treatment value based on the achieved flow bandwidth within the network (Column 5, lines 46 – 55); and marking a second group of one or more packets of said data flow with said second behavioral treatment value (Column 4, lines 15 – 19), wherein the second behavioral treatment value directs devices within the network to treat the second group of one or more packets with a second quality of service treatment (Column 4, lines 20 – 29).

Regarding claims 2, 6, and 10, Chiang discloses that the step of marking a first group of one or more packets includes the step of storing a first differentiated services code point (DSCP) value in each header of the first group of one or more packets of a data flow; the step of determining a second behavioral treatment value includes the step of determining a second DSCP value; and the step of marking a second group of one or more packets includes the step of storing the second DSCP value in each header of the second group of one or more packets of a data flow (Column 4, lines 15 – 29 and Column 5, lines 16 - 19, The Network Class of Services is substantially similar to the DSCP value and priority values are inherently located within the header of a packet so if the QoS Agent is giving the packet or session of packet a certain NCOS then its giving it a priority number within the packet header).

Regarding claims 3, 7, and 10, Chiang discloses that the steps of determining packet flow characteristics of the first group of one or more packets of a data flow (Column 5, lines 19 – 22); and determining the second behavioral treatment value based on the available bandwidth within the network and the packet flow characteristics of the first group of one or more packets of a data flow (Column 5, lines 46 – 49).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 4, 8, and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang in view of Ahmadvand (6,542,490).**

Regarding claims 4, 8, and 12, Chiang discloses that the steps of generating the first behavioral treatment value based on the established QoS policy (Column 4, lines 16 – 19 and Column 4, lines 51 - 58). Chiang does not explicitly disclose that establishing a Quality of Service (QoS) policy for applying a per-hop-behavior treatment for forwarding packets within a flow in said network. Ahmadvand teaches a Quality of service policy that applies a per-hop-behavior treatment for forwarding packets within a flow in said network (Column 6, lines 35 – 41). It would have been obvious to use the teaching of Ahmadvand to use the quality of service policy named Differentiated Services on Chiang's packet marker system in order to have a policy that is easy to implement and is scaleable (Column 6, lines 39 – 41).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent No. 6,502,131 issued to Vaid.

U. S. Patent No. 6,597,660 issued to Rueda.

U. S. Patent No. 6,438,106 issued to Pillar.

U. S. Patent No. 6,449,251 issued to Awadallah.

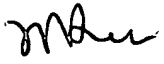
U. S. Patent No. 6,570,851 issued to Koskelainen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (703) 605-0633. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

KB  
October 22, 2003

  
HOSAIN ALAM  
SUPERVISORY PATENT EXAMINER